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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,

Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,

Appellees.

STATEMENT AS TO JURISDICTION

of the Supreme Court Complying With Rule 15 of the Rules of the Supreme Court of the United States.

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Appellants, in accordance with Rule 10 [Section 3] did on the 4th day of March, 1958, file with the District Court of Appeal of the State of California, Second Appellate District, a notice of appeal from the

final judgment of said Court, entered in said action on December 6, 1957.

CITATIONS AND OPINION BELOW.

The judgment of the Superior Court of the County of Los Angeles of the State of California, a court of general jurisdiction, was entered on December 30, 1956 and is transcribed in the Transcript of the record, pages 84 to 85.

The opinion of the District Court of Appeal of the State of California, Second District, Division Three, was entered on December 6, 1957 and is reported in the California advance reports in 155 A.C.A. 885, and is printed herein as an Appendix. A timely petition for rehearing was denied by the same Court on January 3, 1958. A petition for a hearing by the Supreme Court of the State of California was made but denied on January 28, 1958.

STATUTES INVOLVED.

A. The 5th and 14th Amendments to the Constitution of the United States and 28 U.S.C.A. 1257 are relied upon to sustain the jurisdiction of this Court.

B. The statutes of the State of California, the validity of which are involved, are the Industrial Farm Act of California [Statutes 1921, p. 1615, chapter 843, which is Sections 4100 to 4135 of the Penal Code of California, which statute deals with the exer-

cise of the right of eminent domain for prison farm purposes], and Am. Code Amdts. 1873-74, p. 355, Statutes 1911, p. 618, Statutes 1913, p. 852, Statutes 1949, chapter 978, which is Section 1239 of the *Code of Civil Procedure of California* dealing with the general law for exercise of eminent domain.

The pertinent provisions of the Industrial Farm Act of California which are involved are:

> "Section 1. It is the purpose of this act to make possible the substitution of constructive labor for profitless prison confinement in order that those who are charged with or convicted of public offenses and deprived of their liberty may become better citizens because of their disciplinary experience."
>
> "Section 4. For the purpose of establishing such farm the board of supervisors may acquire by condemnation, purchase, lease or donation, as many acres of land suitable for agriculture as may be necessary for the purpose of such farm."
>
> "Section 11. So far as practicable those in custody on such industrial farm shall be employed in productive labor. The products of the farm shall be used: first, to maintain the prisoners and employees on such farm; second, to supply other county institutions having need of the same with the farm's products; third, to supply the needs of paupers, incompetents, poor and indigent persons and those incapacitated by age, disease or accident with whose relief and support the county is charged."

The pertinent provisions of Section 1239 of the *California Code of Civil Procedure* are:

"Sec. 1239. Estates and rights subject to be taken. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or for the protection of water bearing lands from drought therefrom of any character whatsoever from any adjacent lands, or when the property is taken by any mutual water system, county, city and county, or incorporated city or town or a municipal water district, or other political subdivision.

2. An easement, when taken for any other use; . . . ."

STATEMENT OF THE CASE.

The County of Los Angeles, acting under the authority of the Industrial Farm Act, had the Dunn ranch appraised at the agricultural value of $100.00 an acre and then sought to buy it at this agricultural price. This property was wildcat oil property and, when the Dunns wanted to reserve the oil rights, the county officials asserted that the county could and would condemn these oil rights, and therefore the Dunns could not reserve them

"for the reason that the property was to be used as a prison farm and that, in order to protect the property for that purpose, no prospecting or

drilling for oil could be made thereon." (Tr. p. 4, lines 8 to 12.)

The Dunns believed the foregoing assertion and, under threat of condemnation, sold their property at the agricultural price fixed by the county.

After the acquisition of this property, the County of Los Angeles leased the underlying oil rights to The Texas Company on a royalty basis, and The Texas Company prospected, drilled and found oil. The Texas Company and the County of Los Angeles have thus used the underlying oil rights in private business for the mutual financial benefit of both the county and the company.

The position of the appellants in the state Courts was—that, under the Industrial Farm Act, the public use to be served was the substitution of farming for "profitless prison confinement" and therefore the public use was restricted to farming activities which required only the use of the surface of the ground and that, under the authority of *Southern Pacific Railroad Co. v. Savings Union,* 146 Cal. 290; *Cushing v. Gillespie,* 256 Pac.2d 418, 36 A.L.R.2d 1420, Encyclopedie annotation of cases, 36 A.L.R.2d 1424 relating to the condemnor's acquisition of rights to minerals underlying land taken under eminent domain, that where only the surface of the ground is required to fulfill the public use, the condemnor acquires the permanent and exclusive use of the surface but acquires no title to the minerals, including the oil, beneath the surface, leaving the landowner free to exploit these oil rights by slant drilling or otherwise.

It was also the position of the appellants that since the county bought this property at its agricultural value under threat of condemnation, that the county's claim that it acquired the oil rights is violative of the 5th and 14th Amendments to the Constitution of the United States against the taking of private property without just compensation, for in fact the county paid no compensation whatsoever for the oil rights.

It was also the further position of the appellants that a public agency could not take the private property of one citizen under the guise of a public use and then convey it to another private citizen for the joint gain of the public agency and the other citizen.

The trial Court, through the medium of a judgment on the pleadings, confirmed the title of the county to the oil rights. The District Court of Appeal likewise confirmed this taking. We quote:

> "As above stated, the county was empowered to acquire the fee title by condemnation or purchase. A fee title to property includes the oil rights. Oil rights are defined as the exclusive right to drill for and produce oil from the land." (Tr. Appendix A, p. xvi.)

Obviously, the foregoing conclusion is based on the premise that the right to take a fee title is necessary to fulfill the public use outlined in the Industrial Farm Act. The county, however, instead of keeping the fee and devoting it in its entirety to this public use, proceeded forthwith to devote the oil rights to the private enrichment of the county and The Texas Company.

The District Court of Appeal, in order to justify the taking of the private property of the Dunns and devoting it to the private use of the county and The Texas Company, enunciated an extremely novel doctrine of law, to-wit, that a governmental agency, acting under the pretext that the ownership of the underlying oil rights was necessary to prevent the escape of prisoners, could, after acquiring such oil rights, change this policy and decide that the oil rights were no longer needed to protect the sanctity of the prison farm, and could devote them to a private use by leasing them on a royalty basis to The Texas Company. We quote:

> "Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison." (Tr. Appendix A, p. xvii.)

The District Court ignored the fact that these oil rights were taken without just compensation.

QUESTIONS PRESENTED.

The following questions are presented:

(a) The primary question is—does the drilling for, production and sale of oil constitute a public use?

If it does not, then the following questions are presented.

(b) Where the public use to be served requires only the use of the surface of the ground, can a state agency condemn the underlying mineral rights, including the right to drill for and produce oil?

(c) Can a state agency condemn private property for a purported public use and then lease or sell the private property so condemned to another private individual who utilizes the private property in private business for private gain?

(d) Did the County of Los Angeles have the right, under the Industrial Farm Act of California, which statute deals with the exercise of the right of eminent domain for prison farm purposes [Statutes 1921, p. 1615, chapter 843—which is Sections 4100 to 4135 of the Penal Code of California] and under Code Amendments 1873-74, p. 335, Statutes 1911, p. 618, Statutes 1913, p. 852, Statutes 1949, chapter 978, which is Section 1239 of the *Code of Civil Procedure of California* dealing with the general law for the exercise of eminent domain—to condemn the oil rights underlying the surface of the Dunns' ranch—or only the right to condemn the surface of the land sufficient to satisfy the farming purposes set forth in the Industrial Farm Act?

(e) Can a state agency, acting under the authority granted by the Industrial Farm Act, under the guise of a policy program in preventing the escape of prisoners, have the right to take a fee title, including the oil rights, refusing the landowners the reservation of

such oil rights—and then subsequently change the policy program, and dispose of these oil rights to a private corporation, and mutually engage with said private corporation in the private venture of drilling for, producing and selling oil for the mutual benefit of the condemnor and the private corporation?

(f) If the Industrial Farm Act and Section 1239 authorize the purchase and condemnation of oil rights, are these statutes invalid in violating the 14th Amendment to the Constitution of the United States?

(g) If the Industrial Farm Act and C.C.P. 1239 do not expressly authorize the taking of such oil rights but are construed by a state agency, namely, a county, as impliedly granting to that state agency the discretionary power to take such oil rights, is such construction by the agency a violation of the 14th Amendment to the Constitution of the United States?

(h) If the construction of such statutes by such state agency is upheld by the highest Court of the state, is such judicial interpretation violative of the due process laws of the 14th Amendment to the Constitution of the United States?

(i) Is it a violation of the 14th Amendment to the United States Constitution, and a taking of private property without just compensation, if a state agency places a value on real property based solely on the value of the land for agricultural uses, and asserts that it has the right to condemn the fee title, including the oil rights, at the agricultural value thus fixed, without additional compensation for the oil

rights, and threatens the land owner with costly condemnation proceedings if he refuses to consent to such taking, and the land owner, relying on such assertions and threats, sells the land at the agricultural value thus fixed by the state agency?

THE FOREGOING FEDERAL QUESTIONS ARE SUBSTANTIAL AND MEET THE REQUIREMENTS OF RULE 15(e).

The essential constitutional issue, which is not only substantial and unresolved but also of the very highest importance in this day when governmental agencies are grasping for control of private property without just compensation, is whether a state, as an incident to the acquisition of real property to be devoted to a public use, can acquire, under its eminent domain power, further property rights unrelated to any possible public use, such as the right to drill for and produce oil? A correlative and equally important constitutional question is whether, under the guise that it is a necessary incident to the public use, the state may exploit the property for the private gain of the state and of a private oil company. If this decision is allowed to stand, it is an authority which permits and authorizes a state or governmental agency to take private property for a purported public use and, having obtained it under this guise, to then devote it to the private gain of the state or governmental agency and of outside private individuals without paying the original owner just compensation for such non-public property.

THE RULINGS OF THE COURTS OF THE STATE OF CALIFORNIA WERE SUCH AS TO BRING THE CASE WITHIN THE PROHIBITIONS OF THE 5TH AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND, THEREFORE, WITHIN THE JURISDICTIONAL PROVISIONS OF THIS COURT.

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257.

The grounds relied upon as establishing the importance of the jurisdictional questions presented are as follows:

A. The acts of the Los Angeles County officials, in asserting the right to condemn the fee title, including the oil rights, in the real property owned by the petitioners; is an action by an agent of the state, which constitutes a deprivation of the rights of the Dunns protected by the 14th Amendment to the Constitution of the United States.

> "... whoever by virtue of public position under a state government deprives another of any right protected by that Amendment (14th Amendment) against deprivation by the state, 'violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it'."

Chicago B. & Q. R.R. Co. v. Chicago, 166 U.S. 226, 41 L.Ed. 979, 983;

Georgia Power Co v. Decatur, 281 U.S. 508, 74 L.Ed. 999;

Mooney v. Holohan, 294 U.S. 113, 79 L.Ed. 791-94.

B. The assertion of a right to condemn the fee title, including the oil rights, and the leasing of the same to The Texas Company upon a royalty basis, likewise constitutes a violation of the 14th Amendment.

> "The taking by law of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Article of Amendment of the Constitution of the United States."
>
> *Missouri Pacific R. Co. v. Nebraska*, 164 U.S. 403, 41 L.Ed. 489-495.

In *Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55, 81 L.Ed. 510 at 524, the Court says:

> "And this court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."

C. The action of the State Courts in approving the taking of the Dunns' property, and the leasing of the oil rights to the Texas Company is authoritative action in construing and enforcing the laws of the State of California, and is the act of the state. The Federal guarantee of due process extends to such state action.

> "The action of State courts and of their judicial officers in their official capacities is to be regarded as action of the State within the meaning of the 14th Amendment."
>
> ". . . the Amendment makes void state action of every kind which is inconsistent with the guar-

anties therein contained, and extends to manifestations of State authority in the shape of laws, customs or judicial or executive proceedings."

"The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State and the Federal guaranty of due process extends to state action through its judicial as well as its legislative, executive or administrative branch of government."

Shelley v. Kramer, 334 U.S. 1; 92 L.Ed. 1161, p. 1181.

D. The enactment of a state statute which authorizes the taking of private property for other than a public use, or without just compensation, is in conflict with the United States Constitution.

Truax v. Corrigan, 257 U.S. 312, 66 L.Ed. 254:

". . . it is also true that the legislative power of a state can only be exerted in subordination to the fundamental principles of right and justice which the guaranty of due process in the 14th Amendment is intended to preserve, and that a purely arbitrary or capricious exercise of that power, whereby a wrongful and highly injurious invasion of property rights, as here, is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles."

SPECIFICATION OF THE STAGE IN THE PROCEEDINGS IN THE STATE COURTS OF CALIFORNIA AT WHICH AND IN THE MANNER BY WHICH THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED, THE METHOD OF RAISING THEM, AND THE WAY IN WHICH THEY WERE PASSED UPON BY THE COURTS.

The federal questions were first raised by the complaint in the trial Court. The action was one for declaratory relief, in which type of action the complainant is required, under California law, to outline the controversy between the parties, so that the declaratory relief can be granted.

In paragraphs XIV, XV and XVI of the first cause of action in the complaint [Tr. pp. 9 and 10], it is alleged that under the provisions of the Industrial Farm Act [Statutes, p. 1615, ch. 843, 1921] the defendant county was specifically restricted by such legislative enactment to the acquisition of land useful solely for the purpose of a prison farm and suitable for agriculture, and that no part of the oil and gas underlying said property was necessary or appropriate for the purpose of the prison farm or for any other legitimate public use, and that said county was without any right or power to acquire rights in said oil and gas. It was further alleged [page 2] that the property was appraised for agricultural uses at $100 an acre and that the county made demand upon the plaintiffs to sell their property upon this valuation. That [page 3] the plaintiffs advised the county that the price offered was solely based upon an agricultural value and did not include the oil potential. At page 4, paragraph IX, it is alleged that the county

refused to offer plaintiffs additional compensation other than the price based upon agricultural use, that the agents of the county advised plaintiffs that plaintiffs could not reserve the mineral rights for the county had the right to condemn them for they were necessary to protect the property as a prison farm. It is there alleged [paragraph XVII, page 10] that a lease was made to The Texas Company of the oil and gas on the basis of a one-sixth royalty. In the third cause of action [page 14, paragraph II], it is definitely alleged that the defendant County of Los Angeles has taken property of the plaintiff, namely, the oil and gas underlying the land hereinbefore described, without just compensation having first been made to or paid into Court for plaintiff owner.

Having thus laid the basis by factual allegations, the constitutional questions were definitely outlined in the complaint where the statement of the actual controversy was made in accordance with the California law relative to declaratory relief and judgments. We quote:

> "That an actual controversy exists between plaintiff and defendant in that:
>
> (a) Plaintiff contends and alleges that the defendant County of Los Angeles was without any right or power to take any interest in plaintiff's land beyond that necessary for the use of said land for agricultural purposes and that defendant county had no right or power whatsoever to acquire in any fashion any of the oil and gas underlying said land, whereas the defendants contend that the defendant county had a right to

acquire by purchase or otherwise the entire fee, including the oil and gas.

(b) Plaintiff further contends and alleges that he has at all times been the owner of the minerals, including oil, gas and other hydrocarbons underlying said land and that the defendant county was without any right or power to enter into a lease respecting such minerals with defendant The Texas Company, whereas the defendants contend that said oil and gas lease is valid, and that defendant The Texas Company has all the rights of a lessee under said lease.

(c) Plaintiff contends and alleges that the defendant The Texas Company and other defendants at all times have been and now are without any right whatsoever in taking oil from said land." (Tr. pp. 11-12.)

On appeal in our opening brief before the District Court of Appeal and in the petition for hearing by the Supreme Court of the State of California (hereinafter referred to as "opening brief" and "petition for hearing"), the constitutional questions were directly presented to these august tribunals for their consideration. This presentation of constitutional questions was interlaced with reference to California decisions and arguments based upon state law. In this Statement we will refer to the various headings found in the respective briefs and to the text of the briefs, together with the authorities supporting our contentions, regardless of whether they are state or federal authorities.

(1) In the opening brief, a heading reads:

"In exercising the right of eminent domain, no more land and no greater interest can be taken than the public use requires."

In the petition for hearing, this same principle of law was dealt with extensively under the heading:

"Constitutional aspects of the controversy."

In the text of the briefs are found the following two statements:

"One of the elementary principles of the law of eminent domain is that it must be exercised for public use. The taking of property by eminent domain for a use not public is a violation of the basic and essential features of government. It amounts to the taking without due process of law and, therefore, is violative of the constitutional guarantees set forth in Amendment 14 of the United States Constitution."

and

"Neither an act of the Legislature nor the consent of the owner can increase that power. Any statute or ordinance is invalid which provides that private property may be taken for private use."

The following authorities were cited and quoted from:

29 C.J.S. p. 806; 29 C.J.S. pp. 816-818; 29 C.J.S. p. 820;

McCarty v. Southern Pacific Co., 148 Cal. 210;

Spring Valley Water Works v. San Mateo Waterworks, 64 Cal. 123;

Chicago B. & Q. R.R. Co. v. Chicago, 166 U.S. 226; 41 L.Ed. 979;

Tiffany "The Law of Real Property", 3rd edition, p. 682, Sec. 1253;

Warm Springs Irrigation District, et al. v. Pacific Live Stock Co., 270 Fed. 560;

Nichols on Eminent Domain, Sec. 150;

Hayneman v. Blake, 19 Cal. 579;

Lewis on Eminent Domain, Sec. 449, at p. 808.

(2) In the opening brief are the following headings:

"Oil rights in California constitute property separate and distinct from the ownership of the land."

"Oil rights owned by a municipality and the revenue derived therefrom are not devoted to a public use but constitute private property."

Oil rights are held in a proprietary as distinguished from a governmental capacity.

Kubach Co. v. City of Long Beach, 8 C.A.2d 567;

Graciosa Oil Company v. County of Santa Barbara, 155 Cal. 140;

Callahan v. Martin, 3 Cal.2d 110;

Standard Oil Company v. J. P. Mills Organization, 3 Cal.2d 128;

Bernstein v. Bush, 29 C.2d 773.

(3) In the opening brief is the following heading:

"Oil and mineral rights are not the subject of condemnation where the surface of the ground is sufficient to satisfy the public use to be served and, therefore, the Legislature cannot authorize

a county to condemn the oil rights lying beneath the surface and if it attempts to confer this power the act granting it is unconstitutional."

The following cases were referred to and quoted:

Southern Pacific Railroad Co. v. Savings Union, 146 Cal. 290;

Superior Oil Co. v. Harsh, 39 F.Supp. 467;

County School Trustees v. Free, 154 S.W.2d 935;

Cushing v. Gillespie, 256 P.2d 418;

McGregor v. Equitable Gas Co., 21 A. 13;

Alabama Power Co. v. Keystone Lime Co., 67 So. 833 and the encyclopedic note in 36 A.L.R.2d 1426.

(4) In the opening brief, the heading reads: "The Industrial Farm Act (Statutes 1921, page 1615, chapter 843, Penal Code, sections 4100 et seq) which authorizes the county to acquire appellant's land details the public purpose to be fulfilled which only requires the use of the surface of the land."

Pertinent sections of the Act were discussed to establish that the purpose of the Act was to put prisoners, who had been convicted of public offenses, onto a farm for the purpose of producing farm products and to engage in farm labor. The following authorities were cited to the effect that farming only requires the use of the surface of the land.

Hagenburger v. City of Los Angeles, 51 C.A. 2d 161;

Board of Supervisors v. Cothran, 84 C.A.2d 679.

(5) The heading in the Petition for Hearing reads:

> "The holding that a fee can be condemned, including the oil rights, where only the surface of the land is needed to satisfy the public use outlined in the Act, is contrary to the decision of the Southern Pacific Railroad Company v. Savings Union, 146 Cal. 290."

It was pointed out that cardinal rules of statutory construction had been violated, having to do with the pari materia construction of statutes and therefore, under Section C.C.P. 1239, when read in conjunction with the Industrial Farm Act, only an easement could be condemned. In addition, we stated that the Court has failed to apply the universal rule of construction of eminent domain statutes, namely, that such statutes are to be strictly construed against the sovereign, and in favor of the landowner and no greater estate can be taken than is necessary to fulfill the public use and, if an easement is sufficient, a fee cannot be taken.

It was argued in the briefs that the right to purchase was no greater than the right to condemn.

(6) In the opening brief, the heading reads:

> "The county could not purchase the oil rights from the Dunns for the Board of Supervisors could not knowingly invest tax money in the acquisition of property useful only in the prosecution of private business for private gain."

We cited:

City of Los Angeles v. Lewis, 175 Cal. 777;
City of San Francisco v. Ross, 44 Cal.2d 52.

(7) In the opening brief, the heading read:

"No greater title vested in the county by reason of the deed than was necessary to fulfill the public use set forth in the Industrial Farm Act."

Where a deed given in compliance with a special statutory provision from which the deed derived all of its validity, then the statute is construed into and with the deed, and the estate granted is limited to rights described in the statute, and by the Industrial Farm Act it is limited to a surface easement.

Sherman v. Sherman, 122 N.W. 439 at 442;
In re Nolta's Estate, 56 N.Y. Supp.2d 818;
26 *C.J.S.,* Deeds, Sec. 81;
Brown v. Inhabitants of Peabody, 116 N.E. 958;
Superior Oil v. Harsh, 39 Fed.Sup. 467;
and
People v. Thompson, 43 Cal.2d 13.

(8) In the petition for hearing it was also argued that mere convenience does not amount to a public necessity and, although it might be convenient to obtain the oil rights in order to protect the property as a jail farm, that no real necessity existed for such taking. The following cases were cited:

Chicago B. & Q. R. Co. v. Chicago, 166 U.S. 226;
Kansas City v. Hyde, 96 S.W. 201.

(9) In the opening brief it was contended that it was not true that in order to protect the property for a prison farm that no drilling for oil could be made

thereon, for the reason that the use of the surface of the ground satisfied the public use and the underlying oil rights added nothing to such satisfying of such public use, but remained the property of the landowner who could drill for oil by slant drilling or otherwise, citing *Southern Pacific Railroad Co. v. Savings Union,* 146 Cal. 290. It was also contended that the leasing of these same oil rights to The Texas Company and permitting The Texas Company to drill for oil showed that the claim that it was necessary to have the oil rights in order to protect the prison farm was a mere sham and camouflage, citing

Kansas City v. Hyde, 96 S.W. 201.

We respectfully submit that a constitutional question of far-reaching effect is presented by this Appeal and that the constitutional issues were presented to the state Courts and were, in effect, ignored and that, therefore, this Honorable Court should take jurisdiction.

Dated, San Francisco, California,
April 15, 1958.

HENRY W. ROBINSON,
Attorney for Appellants.

COURTNEY L. MOORE,
HERBERT POTHIER,
Of Counsel.

(Appendix Follows.)

Appendix

(Vol. 155 A.C.A. 885.)

In the District Court of Appeal
State of California
Second Appellate District

DIVISION THREE

Civil No. 22,043

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,
Plaintiffs and Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Defendants and Respondents.

OPINION

Appeal by plaintiffs from a judgment for defendants in an action for declaratory relief, to quiet title, for damages for inverse condemnation, and for an accounting.

On July 7, 1939, plaintiffs A. M. Dunn and Myrtle M. Dunn, husband and wife, executed a deed which recited that they granted to the county of Los Angeles certain real property. On July 11, 1939, the board of supervisors of said county accepted the deed and on July 20, 1939, the deed was recorded in the office of the county recorder. On April 20, 1950, the county, as lessor, and The Texas Company, as lessee, executed an oil and gas lease which contained a provision that The Texas Company had the exclusive right to drill for and produce oil upon the property. About August 22, 1950, oil was discovered by The Texas Company and since said date oil has been produced from wells upon said property in large quantities. On August 19, 1955, Mr. Dunn and Mrs. Dunn commenced this action. Defendants are the County of Los Angeles and The Texas Company. In various places in the complaint the word "plaintiff" appears without any designation as to which plaintiff is referred to. (Apparently that word was intended to refer to plaintiff Mr. Dunn.)

The allegations of the first cause (for declaratory relief) were, in part, as follows: Plaintiff A. M. Dunn was the owner of a 1400-acre ranch situated near Newhall. About 1937 the board of supervisors of said county voted to acquire land for a prison farm. The ranch of said plaintiff was selected by the county as the best site for the prison. In 1937, appraisers employed by the county appraised the ranch, for agricultural purposes, at approximately $100 per acre. The county, through its agents, demanded that plaintiff sell his property to the county upon the basis of

the appraisement of $148,000. The county, through its agents, "threatened the said plaintiff that unless said sale was made they would condemn said property, which condemnation would be costly to said plaintiff" and "would unquestionably result in the plaintiff receiving less for his property than the amount offered." At the time of the negotiations between plaintiff and the agents of the county there had been some exploration for oil and gas several miles north of plaintiff's property, but there had been no exploration for oil upon plaintiff's land, and no oil or gas had been developed on plaintiff's land or in the vicinity thereof. Plaintiff advised the county that the price offered by the county was solely upon an agricultural basis and did not include the oil potential, and he believed that oil and gas were on his said property, even though no oil had been developed at that time. Plaintiff repeatedly requested that the county permit him to retain the mineral rights, but the county refused such requests. Plaintiff then proposed that he be permitted to retain one-half of the mineral rights with the stipulation that he be permitted to drill upon the land "only with the written permission of the defendant county at locations to be designated by said county." The county would not agree to the proposals and refused to offer the plaintiff additional compensation for his property, other than the price based on agricultural use. The "agents of defendant county advised plaintiff that he could not reserve the mineral rights under any conditions for the reason that the property was to be used as a prison farm and that in order to protect the property for that purpose that no prospecting or drilling for oil could be made

thereon." Such representations were false, and the county and its agents knew that such representations were false at the time they were made. Plaintiff relied upon said representations. Shortly after the county acquired the property of the plaintiff, the county entered into oil and gas leases with various oil companies, whereby exploration for oil, including drilling operations, was conducted at various places upon the ranch. Plaintiff was unable to obtain the agreement of the agents of the county that he retain the oil and gas rights or any portion of same under any terms or conditions. "(R)elying upon the false and fraudulent representations that a prison farm could not be conducted if the exploration for oil was conducted thereon, and by reason of the threats made by the agents of the defendant county that they could force him to convey his land by condemnation action, plaintiff by reason of the fraudulent misstatements and threats of condemnation, entered into a lease and option agreement, whereby defendant county was given a lease for a period of five years of the following described property: . . . (legal description of property stated in complaint)." Said lease and option agreement provided that the county would have the option to purchase the land at any time within such five-year period for the agricultural evaluation of the land in the amount of $148,000. The county thereafter exercised such option and "purchased such property by a deed dated July 7, 1939," which deed was accepted by the board of supervisors on July 11, 1939, and was recorded July 20, 1939. The county was not authorized by any of the general provisions of the law of

the State of California to acquire land for a prison farm. It was necessary for the county to obtain special legislation in order to acquire land for such purpose. A special statute, chapter 843 of the Statutes of 1921 (a copy of which is attached to the complaint), was passed, which statute created the sole authority for the board of supervisors to acquire the land for the prison farm. Such statute specifically and solely authorized the board of supervisors to acquire land solely for the purpose of a prison farm and only so many acres of land suitable for agricultural purposes as should be necessary for such farm "as set forth in the statute" and for no other purpose. No part of the gas or oil underlying said property was necessary or appropriate for the purposes of said prison farm or for the purpose of any other legitimate public use, and the county was without any right to acquire rights to said oil and gas. Since the acquisition of said property from plaintiff, the county has received bonuses of approximately $500,000 from oil companies for oil and gas leases. About August 22, 1950, oil was first discovered on said land by the defendant The Texas Company under an oil and gas lease between said company and the county, under which lease The Texas Company had the exclusive right to drill for and produce oil upon said land, and under which lease the county received one-sixth of the gas and oil produced therefrom. Since August 22, 1950, oil has been produced from said land in large quantities. The total compensation paid by the county for the land was $148,000. The reasonable value of such property, including oil, gas and other hydrocarbons and minerals

underlying the land at the time of acquisition by the county, was in excess of $100,000,000.

Further allegations of the first cause of action were: Plaintiff A. M. Dunn is informed and believes that the value of the oil taken from said property to date by The Texas Company exceeds $21,000,000; the amount of royalties paid to the county is in excess of $3,500,000; and defendants continue to produce oil from said land and will continue to do so for many years at the rate of approximately $4,500,000 "worth of oil" per year.

Further allegations of the first cause of action were: An actual controversy exists between plaintiff and defendants in that: (a) Plaintiff contends that the county was without any right to take any interest in plaintiff's land beyond that necessary for the use of said land for agricultural purposes, and the county had no right to acquire any of the oil and gas underlying said land, whereas the defendants contend that the county had a right to acquire by purchase or otherwise the entire fee, including the oil and gas. (b) Plaintiff contends that he has at all times been the owner of the minerals, including oil, gas and other hydrocarbons underlying said land, and that the county was without right to enter into a lease respecting such minerals with The Texas Company, whereas the defendants contend that said oil and gas lease is valid and that The Texas Company has all the rights of a lessee under the lease. (c) Plaintiff contends that The Texas Company and other defendants at all times have been and now are without any right in taking

oil from the land. (d) Plaintiff contends that the county had no right to enter into any lease with The Texas Company, and that The Texas Company could not and did not obtain any right in connection with the property or the oil and gas by virtue of a lease from the county "which had no right or authority to execute such lease," and the defendants hold any profits taken from said land as constructive trustees for plaintiff and are obligated to account to plaintiff for the reasonable value of all such oil that has been taken, whereas the defendants contend that they are entitled to all oil taken from the land and are under no obligation to account for its value. (e) Plaintiff contends that the county is obligated to account to plaintiff for all purported royalties received by it for oil produced from the land, and that the county holds purported title to the oil and gas underlying such land as constructive trustee for plaintiff and that the county is obligated to reconvey such oil and gas rights to plaintiff, whereas the county contends that it is entitled to all such royalties and is not obligated to account to plaintiff or to reconvey such oil and gas rights.

A further allegation of the first cause of action was: About August 18, 1955, (the day preceding the filing of the complaint), plaintiffs filed a claim in writing with the board of supervisors for the damages and demands set forth in the complaint.

The second cause of action (to quiet title) incorporated, by reference, the allegations of the first cause of action (declaratory relief), except the allegations

as to the controversy between plaintiffs and defendants. The second cause of action alleged further: Plaintiff is and at all tir es mentioned in the complaint was the owner and entitled to the possession of all the oil and gas underlying the land. Defendants claim an interest therein adverse to the plaintiff; the claims of the defendants are without right; and that the defendants have no right or interest in the oil and gas underlying said premises.

The third cause of action (for damages for inverse condemnation) incorporated, by reference, the allegations of the first cause of action, except the allegations as to the cotnroversy between plaintiffs and defendants. The third cause of action alleged further: The county has taken property of plaintiff, namely, the oil and gas underlying the land, without just compensation having first been made or paid into Court for plaintiff. The value of the oil and gas and other hydrocarbons underlying said land was not included in the price established by the appraisers, and such price included only the value of the property for agricultural purposes. The value of such oil and gas, including the oil and gas heretofore produced from said land, is in excess of $100,000,000.

The fourth cause of action (for an accounting) incorporated, by reference, the allegations of the first cause of action, except the allegations as to the controversy between plaintiffs and defendants. The fourth cause of action alleged further: The defendants have acquired and hold the rights to the oil and gas underlying said property and all income derived from the

exploitation of such oil and gas rights and the development thereof in trust as constructive trustees for the use and benefit of plaintiff and are obligated to account to plaintiff for the value of all the oil and gas taken from the land by the defendants.

The prayer was for a declaration of the rights of the parties; an accounting for the oil and gas taken from the property, and for the proceeds therefrom; a decree quieting plaintiffs' title to the oil and gas and other minerals underlying the property; and for $50,000,000 damages.

The county demurred to the complaint upon the following grounds: the complaint did not state facts sufficient to state a cause of action; and each cause of action stated is barred by sections 318, 319, 338 (subds. 2 and 4), and 343 of the Code of Civil Procedure. The demurrer was sustained without leave to amend as to the second, third and fourth causes of action, but was overruled as to the first cause of action (declaratory relief).

The answer of the county alleged, among other things, that the cause of action for declaratory relief was barred by certain sections of the Code of Civil Procedure (being the same sections which are designated in its demurrer); that plaintiffs had been guilty of laches and unreasonable delay in bringing the action; and that plaintiffs are estopped to prosecute the action.

The answer of The Texas Company alleged, among other things, as follows: Each of the causes of action set forth in the complaint is barred by sections 336

and 338, subdivisions 2 and 4 of the Code of Civil Procedure, and by laches. Plaintiffs are estopped "from making" the claims set forth in the complaint as against said defendant in that about June 7, 1950, plaintiffs, in consideration of $3,614.73 paid to them by said defendant, executed and delivered to said defendant a written instrument (a copy of which was attached to the answer) whereby plaintiffs leased to said defendant the exclusive right to explore for and take oil, gas and other hydrocarbons from a 150-foot strip of land referred to in the complaint and excluded from the land description in the complaint; in the written instrument (lease of the strip) reference was expressly made to the oil and gas lease, dated April 20, 1950, between the county and The Texas Company; plaintiffs knew at the time of leasing the strip that the only method by which the strip could be developed for oil was by drilling wells on the land leased by the county to The Texas Company; the lease of the strip provided that the term of the lease granted therein was for 20 years and so long thereafter as oil or gas or other hydrocarbons are produced from the strip or from the land leased by the county to The Texas Company; the lease of the strip also provided that The Texas Company should pay to plaintiffs .297 of one per cent of the market value of all oil, gas, or other hydrocarbons produced from the land leased by the county to The Texas Company and from said 150-foot strip.

The Texas Company filed an amendment to its answer and attached thereto a copy of a grant deed

from plaintiffs to the county. The amendment alleged that the copy of the deed attached was a copy of the deed referred to in the complaint, and that plaintiffs executed and delivered said deed to the county on or about the day of its date (July 7, 1939).

The county made a motion (1) for a judgment of dismissal under section 1061 of Code of Civil Procedure (which section provides that the court may refuse to declare rights); (2) for judgment on the pleadings; and (3) for a summary judgment. The county filed, with its notice of said motion, an affidavit of James S. Allison. Copies of the following documents were attached to the affidavit: a notice of intention of the board of supervisors (dated June 6, 1939) to purchase the property described in the complaint; an affidavit of publication of such notice; a deed dated July 7, 1939, executed by Mr. Dunn and Mrs. Dunn which recited that they granted to the county the property described in the complaint; and an order of the board of supervisors accepting the deed. The affidavit states that Mr. Allison is the chief clerk of the board of supervisors, and that the copies of the documents attached to the affidavit are copies of the originals of said documents which are on file with said board.

The Texas Company made a motion for judgment on the pleadings.

The motion of the county for judgment on the pleadings and for a summary judgment, and the motion of The Texas Company for judgment on the pleadings, were granted. A document entitled, "Judg-

ment of Dismissal and Declaratory Judgment," was entered on March 30, 1956. The judgment, after reciting that the demurrer of the county had been previously sustained without leave to amend as to the second, third, and fourth causes of action, stated that plaintiffs take nothing as against the county or The Texas Company on the second, third and fourth causes of action; "that the plaintiffs are not, and neither of them is, the owner of or has any right in or to the oil, gas, or other hydrocarbons underlying the land described in plaintiffs' complaint"; and that neither the county nor The Texas Company holds or has held any of the profits from the land for or on behalf of the plaintiffs or either of them. Plaintiffs appeal from the judgment.

Mr. Dunn died on January 21, 1957, and Myrtle May Dunn, Alvin D. Dunn and Citizens National Trust and Savings Bank of Los Angeles, as "Executors" of the Estate of Alvin M. Dunn, were substituted "as plaintiffs and appellants" in place of A. M. Dunn.

Appellants contend (1) that the deed from the Dunns to the county conveyed no more than the county could condemn, that is, the deed conveyed an easement for use of the surface only and did not convey the fee title including the oil rights; and (2) that "if the deed actually conveyed the fee simple, including the oil rights, then it was of no effect and invalid for it was obtained by a mutual misunderstanding of the law, coupled with coercion practiced by the county and, in addition, was invalid because of constitutional prohibitions."

The oil, gas, and other hydrocarbons and minerals underlying the land will be referred to as the oil rights.

With reference to their contention that the deed to the county conveyed an easement for the use of the surface only and did not convey the fee title, appellants argue that the county in obtaining the deed acted under the Industrial Farm Act, and under that act the only interest the county could acquire by purchase or condemnation was an easement for use of the surface for farming (and jail) purposes; and that the deed did not convey a greater estate than the Act authorized the county to acquire.

The act, referred to by appellants as "Industrial Farm Act" (Stats. 1921, ch. 843, p. 1615; now Pen. Code §§ 4100-4135), in effect at the time plaintiffs executed the deed, was entitled, "An act providing for the establishment and administration of industrial farms or industrial road camps in the counties of the state and the commitment thereto and discipline of persons charged with or convicted of public offenses." The act provided, in part, as follows: "SECTION 1. In each county of this state an industrial farm . . . may be established under the provisions of this act . . . SEC. 4. . . . For the purpose of establishing such farm the board of supervisors may acquire by condemnation, purchase, lease or donation as many acres of land suitable for agriculture as may be necessary for the purposes of such farm. . . . The board of supervisors shall erect on such land such buildings and structures and make such improvements . . . as may

be necessary or convenient to carry out the purposes of this act. . . . SEC. 5. When said land has been acquired and such buildings and structures erected and improvements made . . . the board of supervisors shall adopt a resolution proclaiming that an industrial farm . . . has been established in the county . . ." In *People v. Cockrill,* 62 Cal.App. 22 (216 P. 78), the Court said at page 33: "The word 'purchase' has a definite and well-understood juridical meaning . . . and when used for the purpose of characterizing a transaction involving property of any kind it is readily to be understood therefrom that there has been an acquisition by one or more parties of the title to such property." In *McCarty v. Southern Pac. Co.,* 148 Cal. 211 (82 P. 615), the Court said at page 221:

"It may be granted that where the statute in terms provides for the condemnation of the 'land' or 'lands' for the public uses and purposes, or where an equivalent term is used, it will usually be construed to authorize the taking of the fee." In *Crockett Land & Cattle Co. v. American Toll Bridge Co.,* 211 Cal. 361 (295 P. 328), plaintiff's land had been taken by condemnation for an approach to a toll bridge, and the bridge company had built houses under the floor level of the bridge and used them in connection with the operation of the bridge. About three years after the condemnation decree, the plaintiff commenced an action to recover possession of the land (and claimed the right to occupy the houses), on the theory that the condemnation did not vest the fee title of the land in the condemner, and that the bridge company acquired

only an easement in the land—that the bridge company did not have the right to condemn the fee but had the right to condemn only an easement. In that case the Court said at page 364: "The law is that where the statute in terms provides for the condemnation of lands for public use it will be construed to authorize the taking of the fee." It was held therein that the fee title was condemned and that plaintiff was not entitled to occupy the houses. The act, referred to as the Industrial Farm Act, authorized the board of supervisors to acquire by purchase or condemnation "as many acres of land suitable for agriculture as may be necessary for the purposes of such farm." (Appellants do not contend that the land was not suitable for agriculture.) Appellants argue further to the effect that the condemnation provisions of said act are to be considered in connection with the provisions of section 1239 of the Code of Civil Procedure which relates to condemnation generally, that under said section 1239 (as it read in 1921, when it was adopted, and in 1939, when negotiations were had with the Dunns) the county could not acquire the fee title to the property for a prison farm but could acquire only an easement for that purpose. Section 1239 of the Code of Civil Procedure, as it read in 1921 and in 1939, was in part, as follows: "The following is a classification of the estates and rights in lands subject to be taken for public use: 1. A fee simple, when taken for public buildings or grounds, or for permanent buildings . . . or when the property is taken by any . . . county, . . . 2. An easement, when taken for any other

use . . ." Section 1239 of the Code of Civil Procedure did not limit the interest the county could acquire in land for a prison farm to an easement. The county was empowered to acquire the fee title to the land by condemnation. There was no condemnation proceeding herein, but reference is made to condemnation for the reason appellants argue that the county could not acquire more by the deed than it could by condemnation, and that by condemnation, it could acquire only an easement. Appellants' contention that the deed conveyed only an easement is not sustainable.

With reference to appellants' contention to the effect that the deed was void as a conveyance of the oil rights, appellants argue that oil rights are separate and distinct property from the surface of the land and have no public use, and therefore the county could not have taken the oil rights by condemnation or purchase. They argue further that the representation that the Dunns could not under any conditions reserve the oil rights was a misstatement of law, and since the Dunns executed the deed in reliance upon such representation, the deed was void as a conveyance of the oil rights. As above stated, the county was empowered to acquire the fee title by condemnation or purchase. A fee title to property includes the oil rights. Oil rights are defined as the exclusive right to drill for and produce oil from the land. (See *Bernstein v. Bush*, 29 Cal.2d 773, 778 (177 P.2d 913); *Delaney v. Lowery*, 25 Cal.2d 561, 571 (154 P.2d 674).) The representation to the effect that appellants could not under any circumstances reserve the oil rights was

susceptible of various interpretations. The whole representation, according to the complaint, was that the Dunns could not reserve the mineral rights under any conditions *for the reason that the property was to be used as a prison farm* and that *in order to protect the property for that purpose* no prospecting or drilling for oil could be made thereon. The representation should not necessarily be interpreted to mean that as a matter of law the oil rights could not be reserved. It might be interpreted as meaning that as a matter of policy or efficiency in operating a prison farm reservation of oil rights, which might interfere with the security of the prison, should not be allowed. In any event the statement was an opinion given at a time when a condemnation proceeding and the establishment of a prison farm were being discussed. If it was an opinion of law that the county was empowered to acquire the fee title (which would include the oil rights) the opinion was correct. If it was an opinion of law that even though the county could take the fee title by condemnation it was also required as a matter of law to take the oil rights, the opinion was not correct. Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison. The reason stated by the county agents (as the reason for

not allowing the reservation) indicates that the agents were not giving an opinion as to the law. It cannot properly be concluded that the representation was a misstatement of law or that by reason of such representation the deed was void.

Appellants argue further that the taking of the oil rights was not necessary in order to protect the property for use as a prison farm, and that the representation by the county's agents that the taking of the rights was necessary for such protection was false. The county alleged in its answer that the action, insofar as it is based on fraud and mistake, is barred by section 338, subdivision 4, of the Code of Civil Procedure. That section provides that an action for relief on the ground of fraud or mistake must be commenced within three years from the date the cause of action accrued and that the cause of action shall not be deemed to have accrued until discovery by the aggrieved party of the facts constituting the fraud or mistake. In *Hobart v. Hobart Estate Co.*, 26 Cal.2d 412 (159 P.2d 958), the court said at page 437: "The provision tolling operation of the statute until discovery of the fraud has long been treated as an exception and, accordingly, this court has held that if an action is brought more than three years after commission of the fraud, plaintiff has the burden of pleading and proving that he did not make the discovery until within three years prior to the filing of his complaint." (See also *English v. City of Long Beach*, 126 Cal.App.2d 414, 421 (272 P.2d 875).) The same rule applies to actions for relief on the ground of mistake.

(See *Goodfellow v. Barritt*, 130 Cal.App. 548, 559 (20 P.2d 740).) In the present action, plaintiffs allege, in effect, that in July, 1939, they made and delivered the deed to the county; that about August, 1950, The Texas Company, while acting under an oil lease made by the county, discovered oil on the property, and since that time oil has been produced therefrom. The complaint was filed in August, 1955, which was more than three years after oil was discovered on the property. Plaintiffs did not allege when they discovered that the county had executed the lease with The Texas Company, or when they discovered that The Texas Company commenced drilling operations on the property, or when they discovered that The Texas Company had found oil thereon. Appellants assert, however, that oil rights are regarded as an interest or estate in real property, and that "an action for recovery of real property must be commenced within five years, even though possession was obtained by fraud or undue influence"; and since the first invasion of plaintiffs' property rights in the oil, through the medium of production of oil, occurred August 22, 1950, and since the complaint was filed August 18, 1955, it was filed within five years after the original trespass. As above stated, the county also pleaded that the action is barred by sections 318, 319, and 339, subdivision 2, of the Code of Civil Procedure. Section 318 provides: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seised or pos-

sessed of the property in question, within five years before the commencement of the action." Section 319 provides: "No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appears that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seised or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made." Section 338, subdivision 2, (when read in connection with §335) provides that an action for trespass upon or injury to real property must be commenced within three years. As asserted by appellants, oil rights are regarded as an interest in real property. (See *Bernstein v. Bush,* 29 Cal.2d 773, 778 (177 P.2d 913); *Standard Oil Co. v. J. P. Mills Organization,* 3 Cal. 2d 128, 132-133 (43 P.2d 797); *Carlson v. Lindauer,* 119 Cal.App.2d 292, 302 (259 P.2d 925).) The complaint alleges that the Dunns executed the deed in July, 1939, and that oil was discovered by The Texas Company about August 22, 1950. The action was commenced August 19, 1955, which was more than 16 years after the Dunns executed the deed, and about five years after the discovery of oil. If the action be regarded as one to recover oil rights (an interest in real property) it is barred by section 319 of the Code of Civil Procedure (five years); if it be regarded as one to recover for trespass upon or injury

to real property it is barred by said section 338, subdivision 2, (three years); if it is based on fraud or mistake it is barred by said section 338, subdivision 4, (three years). "(T)he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations." (*Maguire v. Hibernia S. & L. Soc.*, 23 Cal.2d 719, 733 (146 P.2d 673, 151 A.L.R. 1062).) "(T)he period of limitations applicable to ordinary actions . . . should be applied in like manner to actions for declaratory relief." (*Maguire v. Hibernia S. & L. Soc., supra*, 734.)

The Texas Company attached to its answer a copy of the oil lease which said company and the Dunns entered into on June 7, 1950, and in which lease reference was expressly made to the oil lease which the county and said company entered into on April 20, 1950. Section 448 of the Code of Civil Procedure provides: "When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file . . . an affidavit denying the same. . . ." Plaintiffs did not file such an affidavit, and therefore the genuineness and due execution of oil lease (between The Texas Company and the Dunns) were admitted. It appears from that lease that Mr. and Mrs. Dunn knew on June 7, 1950, that the county and The Texas Company had entered into an oil lease on April 20, 1950, whereby the county had granted The Texas Company the right to drill for and produce oil from the property. It

therefore appears that Mr. and Mrs. Dunn knew on June 7, 1950, which was more than five years before the action was commenced on August 19, 1955, that the county was not adhering to its alleged representation "that in order to protect the property for use" as a prison farm no drilling for oil could be made thereon. If the Dunns considered that such representation was fraudulent or was a mistake and that, by reason thereof, they had a cause of action for relief on the ground of fraud or mistake, it appears that they discovered the facts constituting the fraud or mistake more than five years before the action was commenced (i.e., they discovered the fact on June 7, 1950, and the action was commenced on August 19, 1955).

Appellants assert that they could have obviated the contentions as to the statute of limitations, laches, and estoppel by amending the complaint. They state that the amendment would have been to the effect that the plaintiffs continued to rely on the false representations of the county agents, regarding the reservation of oil rights, until about June 6, 1955, when an attorney (not present counsel) informed them that "misrepresentations as to the existing law had been made to them" when the agents said that plaintiffs could not under any condition retain the mineral rights. As above stated, the whole representation, already alleged in the complaint, includes a statement of the reason the oil rights could not be reserved. That reason indicates that the agents were not making a representation as to the law but were stating a matter of policy in operating a secure prison farm. The pro-

posed amendment would merely add to the existing allegations a statement that plaintiffs relied on the presently alleged representation until an attorney informed them to the effect that the representation was a misrepresentation as to law. The trial court, in determining the matter of an amendment, could consider the statements in the lease between plaintiffs and The Texas Company which established that plaintiffs knew on June 7, 1950 (more than five years before the commencement of the action) that the county had entered into an oil lease with The Texas Company. In view of such knowledge by the plaintiffs, an amendment to the effect that plaintiffs continued thereafter (for more than five years) to rely on the representation that the oil rights could not be reserved would not materially change plaintiffs' position with respect to the issues. During the period of eleven years following the making of the deed by plaintiffs and preceding the making of the oil lease by the county, the plaintiffs apparently did not seek information as to the accuracy of the alleged legal opinion given by the county agents. Also, during a period of approximately five years after plaintiffs knew that the oil lease had been made by the county, they apparently did not seek information as to the accuracy of the alleged legal opinion. It appears that it was after oil was produced in large quantities that plaintiffs received information that there was an alleged misrepresentation as to law.

Appellants contend further that the deed was void as a conveyance of the oil rights because the Dunns executed the deed under threats by the county agents

of "costly condemnation proceedings," which threats were a "form of coercion." This contention is not sustainable. The county had the right to maintain a condemnation proceeding, and the fact that the agents said that such a proceeding would be costly would not constitute a ground for declaring the deed void as a conveyance of the oil rights. Furthermore, the county pleaded that the action was barred by section 343 of the Code of Civil Procedure. That section provides that an action for relief not otherwise provided for must be commenced within four years after the cause of action accrued. In *Wade v. Busby,* 66 Cal.App.2d 700 (152 P.2d 754), it was said (p. 702) that an action to set aside a deed upon the ground of undue influence was governed by the four-year period of limitation prescribed in section 343 of the Code of Civil Procedure. In the present case the claim regarding coercion was barred by said section.

Appellants contend further that the deed was void as a conveyance of the oil rights because the purchase price was based on the value of the land for agricultural purposes. The complaint alleged that the option agreement between plaintiffs and the county provided that the county would have the option to purchase the land "for the agricultural evaluation of the land in the amount of $148,000." This contention is not sustainable.

The Texas Company pleaded: (1) that plaintiffs are estopped to claim as against it that the deed to the county did not convey the oil rights; and (2) that any such claim as against it is barred by laches. It

argues, in effect, that plaintiffs acknowledged the validity of the lease between The Texas Company and the county by execution of the lease between plaintiffs and The Texas Company covering the 150-foot strip; that plaintiffs thereby induced The Texas Company to carry on the development of the property in the belief that it held a lease; that plaintiffs may not now take a contrary position; and that since it appears from the allegations of the complaint that oil was discovered on the property by The Texas Company about August 22, 1950, plaintiffs' claim is barred by laches. On June 7, 1950, the Dunns and The Texas Company executed an oil and gas lease covering the 150-foot strip, which lease refers in several places to the oil and gas lease between the county and The Texas Company. The royalty payable to the Dunns under the 150-foot strip lease is based upon production of oil and gas from the 150-foot strip and from the land leased by the county to The Texas Company. Appellants are estopped to claim as against The Texas Company that the deed to the county did not convey the oil rights. In view of that conclusion, it is not necessary to determine whether the claim of appellants against The Texas Company is barred by laches.

The judgment is affirmed.

Wood (Parker), J.

Shinn, P. J., and Vallée, J., concurred.

Filed December 6, 1957,
James E. Brown, Clerk.

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In the Supreme Court
OF THE
United States

October Term, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,
Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Appellees.

APPELLANTS' ANSWER TO MOTION TO DISMISS APPEAL.

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Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Appellees.

APPELLANTS' ANSWER TO MOTION TO DISMISS APPEAL.

Appellees' Motions to Dismiss are based upon three grounds: (1) the Federal question sought to be reviewed was not timely and properly raised, (2) the Appeal does not present a substantial Federal question and (3) the Judgment rests on an adequate non-federal ground.

I.

REPLY TO THE CONTENTION THAT THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED.

In our Statement of Jurisdiction (pages 14-16) we outlined the allegations of the complaint, which by ultimate fact allegations asserted the constitutional violations of which we complain, which presentation was followed by a summary of the Points and Authorities (pages 16-22) urged before the Appellate Courts. No exceptions have been taken to such summation, other than the claim that the constitutional question was not presented in the trial Court.[1]

The trial Court (Tr. pages 84-5) rendered a judgment on the pleadings, which is equivalent to a judgment on demurrer, as a result of which the allegations of the complaint, in effect, become findings of fact.

Whether a complaint, as tested by demurrer, sets up a sufficient right of action grounded on the constitution is necessarily a question of Federal law, and where a case coming from a state court presents this question, the Supreme Court will determine for itself the sufficiency of the allegations, displaying the constitutional right, and is not concluded by the view taken by the state court.[2]

---

[1]The County of Los Angeles in its Answer restated the constitutional question found in the Complaint:

". . . the defendant County of Los Angeles had the right to acquire the entire fee simple title to said property and that such fee simple title included the right to extract any and all oil and gas or other minerals underlying said land". (p. 8, lines 1 to 9.)

[2]*Truax v. Corrigan*, 257 U.S. 312, 62 L.Ed. 654; *Staub v. City of Baxley*, 78 S.Ct. 277; *First National Bank of Guthrie Center*

When the complaint is judged by these standards, it appears the constitutional questions were not only properly raised in the trial Court, but it is admitted by both appellees that the constitutional questions were distinctly asserted in the District Court of Appeal of the State of California, which is sufficient to satisfy Rule 15(2)d of the Rules on Appeal.

II.

THE APPEAL PRESENTS SUBSTANTIAL FEDERAL QUESTIONS.

Although the County of Los Angeles admits (page 12) that the ten Federal questions stated and epitomized in the Statement of Jurisdiction (pages 7 to 10) were not "expressly passed upon by the Courts of California," appellees now attempt to bypass the consideration of the Federal questions, by claiming—that the appellants' deed to the County was a grant of fee title, which fee title included the oil rights, and that the extent of the interest which was conveyed is solely a matter of local law (L.A., page 6; Tex. page 6), for the reason that under the State law a grant deed is a final memorial of title invulnerable to attack by evidence showing that it conveyed a lesser estate than a fee title. The California court, however, did not base its decision on any such doctrine, for it was never mentioned in the Opinion.

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v. *Anderson*, 269 U.S. 341, 346, 70 L.Ed. 295; *Schuylkill Trust Co. v. Commonwealth of Penna.*, 296 U.S. 113, 122-3, 80 L.Ed. 91; *Levell v. City of Griffin*, 308 U.S. 444, 450, 82 L.Ed. 949; *Davis v. Wechsler*, 63 U.S. 22, 24, 68 L.Ed. 143; *Ward v. Board of Commissioners of Love County*, 253 U.S. 17, 22, 64 L.Ed. 751.

The California court applied an entirely different doctrine of law in interpreting and construing the deed, which doctrine was unquestionably correct and proper. It is the law, that—when a deed is given under the authority of a statute, the title passing is the statutory title granted by the Legislature, and the grantee can only obtain such title as is necessary for the statutory purpose. This doctrine is simply stated in 26 *C. J. S.* p. 807:

> "A special statutory provision from which a deed derives all of its validity will be construed into and with the deed "[3]

The California court applied this doctrine by analyzing (Appendix pp. xiii to xvi) the Industrial Farm Act and *C.C.P.* 1239 (The California condemnation statutes), thus reaching the conclusion that the County of Los Angeles, under these enabling statutes, was entitled to condemn or purchase the fee title, including the oil rights, and stated, in answer to appellants' claim that the deed did not convey the oil rights, that it did (referring to the prior analysis of the California statutes) for:

> "As above stated, the County was empowered to acquire the fee title by condemnation or purchase. A fee title includes the oil rights."

Since the court based the validity of the deed upon the premise that the county was empowered under the California condemnation statute (*C.C.P.* 1239) and

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[3] *Sherman v. Sherman*, 122 NW 439, 442; *In re Nolta's Estate*, 56 NY Supp. 2d 818; *Brown v. The Inhabitants of Peabody*, 116 NE 958, 959; *People v. Thompson*, 43 Cal. 2d 13.

the Prison Farm Act to acquire the fee title by condemnation or purchase, a Federal question is involved, namely, did the county have such power? This question is not a matter of local law, for the validity or interpretation of such statute are Federal questions, if it is claimed—that either the statute itself, or the interpretation placed thereon, violates the prohibitions of the 14th Amendment.

Moreover, this right to condemn or purchase the oil rights was not based by the court on any express language found in the Prison Farm Act, but was based on the theory that the taking or acquiring of these oil rights was a convenience in connection with the operation of the public use outlined in the Prison Farm Act. The California court said:

> "Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison."

We attacked such claim on the ground that the subsequent disposition of these oil rights to The Texas Company conclusively proved that the taking was not necessary to fulfill the public use. The California Court recognized that such an attack was made. We quote from its opinion:

> "Appellants argue further that the taking of the oil rights was not necessary in order to protect

> the property for use as a prison farm, and that the representation by the county's agents that the taking of the rights was necessary for such protection was false."

Even if a subordinate governmental agency, such as a Board of Supervisors of a county, has the discretionary power to determine the extent of title necessary to be taken in order to properly service the public use outlined in the legislative enactment, nevertheless such power must be honestly exercised and not exercised for the purpose of avarice and gain. The leasing of these same oil rights to The Texas Company establishes beyond debate that the assertions of the county officials were false and untrue and a misstatement of the law, and that any discretionary power so exercised was not exercised in the furtherance of the public use, but for the private gain of the county. The Supreme Court of Missouri when faced with this same problem (*Kansas City v. Hyde*, 96 S.W. 201, 113 *Am. State Reports* 766) stated:

> "Could the city council by a false recital in the ordinance give it validity which it would not have if it recited the truth, and when the city comes to ask the aid of the court to carry the ordinance into effect, is it possible that the court must be a mere tool to do the will of the council with no power to inquire into the truth of the matter? What protection has a citizen for his private constitutional rights if the courts cannot look through a sham and see the truth, and how can the courts learn the truth if they must take the recitals in the ordinance as conclusive and reject all evidence to show their untruth."

Therefore, when this problem is stripped of its non-essentials, the simple question is presented: Did the Legislature of the State of California, in passing the Prison Farm Act, authorize the various counties of the state to acquire, either by condemnation or purchase, the underlying mineral rights, including oil, when the public use to be served was the rehabilitation of prisoners by farming in the open air, and where only the surface of the ground was required to service this use? And, if the Legislative enactment did so empower the counties, is not this Legislative enactment violative of the 14th Amendment? The law on this subject is to be found in Appellants' Statement of Jurisdiction (pages 17 to 22). This is a Federal question as distinguished from a state question, and the fact that the County may have obtained a deed by erroneous statements as to the law and without paying compensation does not reduce this Federal question to a state question of interpreting and construing the deed.

We submit that substantial Federal questions are presented on this appeal, and appellees cannot, at this late date, hide behind the claim that the only question involved is—the extent of interest conveyed by the customary deed, given in accordance with the general law of the state relating to deeds between private individuals, when the deed in the present case derived its validity, not from the general law, but from a special statutory enactment, which statute is construed into and with the deed.

III.

STATUTE OF LIMITATIONS.

An underlying rule of eminent domain is that where private property is condemned for one public use, it cannot be appropriated to another and different use. It is admitted by the pleadings that this property was purchased under threat of condemnation for one public use, to-wit, the maintenance of a prison farm for agricultural purposes exclusively. There was never any condemnation or purchase of said property for any other use. When the County of Los Angeles allowed The Texas Company the use of said property for oil exploration, it abandoned the original use, and this abandonment took place admittedly on August 22, 1950.

> "Where private property is condemned or dedicated for one public use, it cannot be appropriated to another and different use, or be appropriated to private use. Where the city of St. Louis condemned private property for use as a wharf, it cannot lease it unconditionally for a term of years to be used in the prosecution of private business and for private gain."
>
> *Belcher Refining Co. v. St. Louis Elev. Co.*, 82 Mo. 121.

See also:

State v. Laverack, 34 N.J.L. 201;

Cincinnati v. Vester, 33 Fed. Rep. 2d 242.

When the public use under which property is acquired is subsequently discontinued or abandoned, in whole or in part, and the property thereafter is devoted to a private use inconsistent with the original

public use for which the property was dedicated, the title and right to possession reverts to the original landowner.

Barclay, et al. v. Howell's Lessee, 6 Peters 497, 8 L.Ed. 477;

Harris v. Elliott, 10 Peters 25, 9 L.Ed. 333;

Nichols on Eminent Domain, Vol. 3, pages 192 and 214.

The Statute of Limitations is not applicable as the owner is protected by the rule that title does not pass until compensation has been ascertained and paid.

Kennedy v. City of Indianapolis, 103 U.S. 599, 604, 26 L.Ed. 550, 553;

Cherokee Nation v. So. Kansas R.R. Co., 135 U.S. 641, 34 L.Ed. 295, 303;

Hanson Lumber Co. v. U.S., 261 U.S. 581, 587, 43 Sup. Ct. 442, 444, 67 L.Ed. 809.

It is further the rule that when a complaint sets up violations of rights granted or protected by the Constitution of the United States and such violations are presented to a state court, that the plaintiffs are then entitled to invoke the jurisdiction of the United States Supreme Court where the state court has denied these rights or failed to give them due recognition. This right is not defeated even though there is an apparent effort by the state court to avoid the constitutional issue by inserting in the Opinion a purported local issue.[4]

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[4] *Fox River Paper Co. v. Railroad Commission of Wisconsin,* 71 L.Ed. 1279, 1283-4; *Vandalia Railroad Co. v. State of Indiana,* 52 L.Ed. 246; *Grand River Dam Authority v. Grand-Hydro Co.,* 93 L.Ed. 64; *Staub v. Baxley,* 355 U.S. 309, 2 L.Ed. 302.

The Court, in holding that the deed conveyed fee title, in effect held that the appellants did not and never had a cause of action. A ruling on the Statute of Limitations was unnecessary if this holding was sound, for the reason that a Statute of Limitations plea is based on the doctrine that the plaintiff had a cause of action which he had lost through the passage of time. We maintain that the holding relative to the Statute of Limitations was inserted in the state court's decision for the sole purpose of preventing appellants from invoking the jurisdiction of this Court on the constitutional questions which were ignored by the state court.

The state court recognized that oil rights are regarded as an interest or estate in real property and that an action for recovery of real property must be commenced within five years. It says (Appendix p. xx):

> "As asserted by appellants, oil rights are regarded as an interest in real property. (See *Bernstein v. Bush*, 29 Cal.2d 773, 778 (177 P.2d 913); *Standard Oil Co. v. J. P. Mills Organization*, 3 Cal.2d 128, 132-133 (43 P.2d 797); *Carlson v. Lindauer*, 119 Cal.App.2d 292, 302 (259 P.2d 925).)"
>
> * * *
>
> "If the action be regarded as one to recover oil rights (an interest in real property) it is barred by section 319 of the Code of Civil Procedure (five years)";

It was appellants' position that since the first invasion of plaintiffs' rights to the oil, through the

medium of production thereof, occurred on August 22, 1950 and since the complaint was filed August 18, 1955, it was filed within five years after the original entry. The California Court admits that the five-year statute applies but it attempts to evade its effect by stating (Appendix xxi) that it appears that on June 7, 1950 the Dunns knew that the county and The Texas Company had entered into an oil lease on April 20, 1950. In other words, the court places the time of the commencement of the running of the Statute of Limitations as of June 7, 1950 when the Dunns had knowledge that the county had made an oil lease to The Texas Company and not as of August 22, 1950, when the production of oil commenced. There are two answers to this statement (1) the court disregarded the established law applicable to oil in California, which is—that oil being of a fugitive character title does not attach until the oil has been brought to the surface and reduced to possession.[5] This principle of California oil law was the basis of the decision in *Bandini Petroleum Company, et al. v. Superior Court of the State of California*, 284 U.S. 8, 76 L.Ed. 826, 832, which involved a conservation measure, where this court states that under the law of California: "On account of the self-propelling or migratory character

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[5] *Mohawk Oil Co. v. Hopkins*, 196 C. 148, 236 P. 133; *Ventura County v. Barry*, 207 C. 189, 277 P. 333; *People v. Associated Oil Co.*, 211 C. 93, 294 P. 717; *Western Oil & Ref. Co. v. Venago Oil Corp.*, 218 C. 733, 24 P.2d 971, 88 A.L.R. 1271 (disapproved on another point in *La Laguna Ranch Co. v. Dodge*, 18 C.2d 132, 114 P.2d 351, 135 A.L.R. 546); *Callahan v. Martin*, 3 C.2d 110, 43 P.2d 788, 101 A.L.R. 871; *Dabney-Johnston Oil Corp. v. Walden*, 4 C.2d 637, 52 P.2d 237; *Bernstein v. Bush*, 29 C.2d 773, 117 P.2d 913.

of natural gas as well as oil" the owner of the surface does not have an absolute title to the oil and gas beneath and could only acquire such title when he had reduced these substances to possession; (2) The making of the lease on June [illegible]195 at the utmost merely created a cloud on the Dunns' title to the oil rights and, until such claim was asserted in such a manner as to jeopardize the rights of the owners to the property, no cause of action accrued.

Secret Valley Land Co. v. Perry, 187 Cal. 420, 426.

The claimed Statute of Limitations therefore, did not commence to run until there was an invasion of the plaintiffs' property which occurred for the first time when The Texas Company reduced this migratory oil to ownership, which makes it quite apparent that the California State Court's decision on the Statute of Limitations was contrary to its previous decisions and that the sole purpose was to insert a local issue to prevent our appeal to this Honorable Court.

CONCLUSION.

We submit that substantial Federal questions of great importance are presented by the record in this appeal and that appellees cannot hide behind the claim that the only question involved is the extent of interest conveyed by the usual deed absolute given in accordance with the general law of the state relating to deeds between private individuals. The present deed was a special type of deed which derived its validity from a

special statutory enactment which is read into and becomes a part of the deed and controls its interpretation and construction. Finally, the state court cannot prevent the consideration of these federal questions by unnecessarily inserting in its opinion a local issue, which local issue was obviously decided contrary to established law.

Dated, San Francisco, California,
June 11, 1958.

Respectfully submitted,
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COURTNEY L. MOORE,
HERBERT POTHIER,
Of Counsel.

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Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation,

Appellees.

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE COUNTY OF LOS ANGELES IN SUPPORT THEREOF

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IN THE

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Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation,

Appellees.

No. .....

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE COUNTY OF LOS ANGELES IN SUPPORT THEREOF

To the Supreme Court of the United States of America:

The COUNTY OF LOS ANGELES, an appellee herein, hereby moves this court, pursuant to the provisions of Rule 16, subdivision b of the Revised Rules of the Supreme Court of the United States, to make and enter its order dismissing the appeal of appellants

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. DUNN, Deceased; and MYRTLE M. DUNN, upon the following grounds:

1. The appeal does not present a substantial federal question.

2. The federal question sought to be reviewed was not timely or properly raised.

3. The federal question sought to be reviewed was not expressly passed upon by the courts of the State of California.

4. The judgment rests on an adequate non-federal basis.

Said motion will be made upon the record in the above-entitled cause, together with the brief included herewith.

DATED: May 20, 1958.

HAROLD W. KENNEDY, County Counsel
LLOYD S. DAVIS,
Deputy County Counsel
Attorneys for Appellee,
County of Los Angeles.

STATEMENT OF THE CASE

This action was commenced in the Superior Court of the State of California, in and for the County of Los Angeles, pursuant to a complaint containing four causes of action: (1) For declaratory relief; (2) To quiet title; (3) For damages for inverse condemnation; and (4) For an accounting. The demurrer of the County of Los Angeles was sustained as to the second, third, and fourth causes of action and a declaratory judgment was rendered in favor of the County on its motion for a summary judgment. The judgment of the Superior Court was affirmed by the District Court of Appeal, State of California, Second Appellate District, 155 A. C. A. 885, 318 P. 2d 795, and a hearing in the Supreme Court of the State of California was denied.

The allegations of the complaint are substantially as set forth in the Opinion of the District Court of Appeal, which has been attached as an appendix to Appellants' Statement as to Jurisdiction.

These allegations can be summarized as follows:

In 1939, the plaintiffs A. M. Dunn and Myrtle M. Dunn executed a deed conveying to the County of Los Angeles certain ranch property located in the vicinity of Newhall, California, for a consideration of $148,000.00. During the negotiations, Mr. Dunn expressed a desire to retain the mineral rights in said property but was advised by the County's agents that

"he could not reserve the mineral rights under any conditions for the reason that the property was to be used as a prison farm and that in order to protect the property for that purpose that no prospecting or drilling for oil could be made thereon." It was alleged that these representations were false. It was further alleged that the plaintiffs were induced to convey their property by threats made by agents of the County who stated that unless the sale was made the County would condemn the property, which condemnation proceedings would be costly to the plaintiff. It was also contended that the $148,000.00 paid represented only the agricultural value of the property and allowed nothing for the oil potential. In 1950, the County executed an oil and gas lease with The Texas Company, as lessee, and oil and gas of substantial value has since been extracted from said property. Under these facts, the plaintiffs prayed for a judgment declaring the rights of the parties; an accounting for the oil and gas taken from the property; a decree quieting plaintiffs' title to the oil and gas and other minerals underlying the property; and for $50,000,000.00 damages.

The County's demurrer was based upon the failure of the complaint to allege facts sufficient to constitute a cause of action and upon various statutes of limitation. The motion for a summary judgment was based essentially on the same grounds and it placed before the court a copy of the deed by which the property in

question was conveyed, together with the record of the proceedings before the Board of Supervisors of the County of Los Angeles, indicating that the procedural requirements for the purchase of the property by the County had been satisfied.

The judgment ordered that the plaintiffs take nothing by their second, third, and fourth causes of action and declared:

> " . . . that the plaintiffs are not, and neither of them is, the owner of or has any right in or to the oil, gas, or other hydrocarbons underlying the land described in plaintiffs' complaint, either before or after production thereof, and that neither the County of Los Angeles nor The Texas Company holds at this time, or ever was held in any capacity whatsoever, any of the profits taken or received from the said land for or on behalf of the said plaintiffs or either of them."

ARGUMENT

I.

THIS APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

On its face, the complaint is based simply on allegations of fraud or duress with respect to representations made by agents of the County during negotiations for the purchase of certain real property by the County. The allegations are insufficient to constitute a cause of action based upon fraud or duress, being at most expressions of opinion. Furthermore, it would appear that any cause of action that plaintiffs might have possessed was barred by one or more statutes of limitations.

Appellants in their appeals have sought to raise a constitutional question respecting the authority of a public agency to acquire oil and gas rights by eminent domain proceedings. Clearly, this is not an issue in this case. No eminent domain proceedings were ever instituted. The plaintiffs, dealing at arm's length with the County, deeded their property without reservation of the mineral rights. The question as to the interest in land conveyed by a deed absolute in form is one solely of State law and would involve no Federal question.

Shulthis v. McDougal, 225 U.S. 561, 569; 56 L. ed. 1205, 1210;

United States v. Crosby, 7 Cranch 115, 116; 3 L. ed. 287;
United States v. Fox, 94 U.S. 315, 320; 24 L. ed. 192.

The legal capacity of a County or other political subdivision of a State to acquire a fee simple title to property is likewise a local question.

Laramie County v. Albany Co., 92 U.S. 307; 23 L. ed. 552.

Appellants have argued that Mr. Dunn was induced to deed his property under the mistaken belief that the law authorized the County to acquire a fee simple title by eminent domain proceedings. This argument was answered by the opinion of the District Court of Appeal, where it was pointed out that there could be no mistake of law because the Legislature had specifically authorized the acquisition by eminent domain proceedings of a fee simple title where property was being acquired for public buildings and grounds or where it was being acquired by a County and, furthermore, that any cause of action based upon mistake was barred by the applicable statute of limitations.

The nature of the estate to be acquired in an eminent domain proceeding is normally determined by the Legislature.

Shoemaker v. United States, 147 U.S. 282, 298; 37 L. ed. 170, 184;

United States v. Meyer, (C.A. 7th) 113 F. 2d 387, cert. den., 311 U.S. 706; 85 L. ed. 459.

The California Constitution guarantees a property owner just compensation where his property is taken for a public use. (Section 14 of Article I of the California Constitution). And by statute, Title VII, Part 3, Code of Civil Procedure, the property owner is assured of his day in court unless he waives such proceedings. Therefore, there can be no basis for the contention that plaintiffs' property was taken without due process of law. An entirely adequate judicial proceeding was available to appellants to determine the right of the County to acquire a fee simple title to property and to determine the fair market value of the land taken. Clearly, the availability of such proceedings satisfies the requirements of due process of law.

Fallbrook Irrigation District v. Bradley, 164 U.S. 112, 175; 41 L. ed. 369, 394.

Likewise, there is no merit to appellants' contention that a statute authorizing the acquisition of a fee simple title to real property for a public use would violate the United States Constitution. Normally, where a public agency acquires land for a public institution, such as a prison farm, it requires the exclusive occupancy and control over the land. Under California law, a reservation of the minerals includes with it the right to enter onto the land and extract the minerals irrespective of the damage caused to the surface. In the case

of placer mining, the effect may be to render the property wholly unusuable for other purposes. See, for instance:

Yuba Investment Co. v. Yuba Consolidated Gold Fields, 184 Cal. 469;
Trklja v. Keys, 49 Cal. App. 2d 211.

Oil production may likewise completely destroy the utility of property.

MacDonnell v. Capital Co., 130 F. 2d 311, 320 (C.A. 9th) cert. den. 317 U.S. 692.

It would therefore appear that the Legislature reasonably exercised its judgment in determining that a fee simple title to real property may be acquired for public buildings and grounds.

No issue is raised by the pleadings with respect to the authority of a County to acquire only the oil and gas rights as a separate estate in a parcel of property for the sole purpose of producing oil and gas. Nor has it been contended by any of the parties, that any statute authorizes such an acquisition. Therefore, any arguments presented by appellants with respect to whether or not a County could constitutionally be authorized to acquire oil and gas rights for the limited purpose of producing and selling oil and gas are wholly outside the issues of this case.

Likewise, no issue is raised in the pleadings with respect to the authority of a County to lease lands

owned in fee for the production of oil and gas. A lease executed in 1950 by the County, even if unauthorized, could in no way affect the fee simple title acquired by the County in 1939. This action does not purport to be one in *quo warranto* to test the authority of a County to lease property owned by it in fee. Nor is it a taxpayer's action to restrain the County from entering into such a lease. Appellants' complaint is apparently based on two theories: First, that the conveyance of the property was induced by fraud, duress, and for an inadequate consideration; and, second, that the deed did not convey the oil and gas rights. Clearly, these issues do not present federal questions but involve solely questions of local law.

II.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED.

Here the appellants in 1939 had the opportunity to contest the authority of the County to acquire a fee simple title, by requiring the County to proceed with an eminent domain action. If there was any basis for their contention that the California eminent domain procedures violated provisions of the United States Constitution, such contentions could have been specifically raised at that time.

Furthermore, even in the complaint, no issue is raised with respect to the constitutionality of the statutes under which the County acquired this property. The constitutional question was raised for the first time somewhat obliquely in Appellants' Reply Brief and Petition for a Rehearing and primarily for the purpose of statutory construction. Clearly, the question as to the authority of a County to condemn the fee title to appellants' property was neither timely nor properly raised.

III.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT EXPRESSLY PASSED UPON BY THE COURTS IN THE STATE OF CALIFORNIA.

Appellants are here raising the question as to the authority of a County to acquire the oil and gas rights in a parcel of property for the purpose of entering into the oil business. Clearly, such a question was not raised in the pleadings nor was it passed upon by either the trial or appellate courts.

IV.

THE JUDGMENT RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

Both the trial court and the District Court of Appeal concluded that any cause of action that appellants may have had was barred by one or more statutes of limitations and, therefore, the decision rests on an adequate non-federal basis.

It has been held that questions respecting the application of state statutes of limitations do not present a federal question.

Wood v. Chesborough, 228 U.S. 672, 57 L. ed. 1018;

Preston v. Chicago, 226 U.S. 447, 57 L. ed. 293.

We respectfully submit, therefore, that the appellants present no substantial federal question for the decision of this Court, and that the appeal should be dismissed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. DUNN, Deceased; and MYRTLE M. DUNN, *Appellants,*

v.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation, *Appellees.*

MOTION TO DISMISS
and
SUPPORTING BRIEF, FILED BY APPELLEE, THE TEXAS COMPANY

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May 1958

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. DUNN, Deceased; and MYRTLE M. DUNN, *Appellants,*

v.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation, *Appellees.*

MOTION TO DISMISS

The Texas Company, an appellee herein, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves the Court to enter an order dismissing the appeal of appellants herein on the grounds that:

1. The appeal does not present a substantial federal question.

2. The lower court's judgment rests on adequate non federal bases.

Said motion will be made upon the record in the above-entitled cause, together with the brief included herewith.

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May 1958

BRIEF IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF THE CASE

This action was commenced by the filing of a complaint in the Superior Court of the State of California, in and for the County of Los Angeles, on August 19, 1955. The complaint sought (1) declaratory relief, (2) to quiet title, (3) damages for inverse condemnation, and (4) an accounting. The demurrer of appellee, County of Los Angeles, was sustained without leave to amend as to the second, third and fourth causes of action. (R. 84-85) After answers by the County of Los Angeles and The Texas Company, the motion of the County for judgment on the pleadings and for a summary judgment and the motion of The Texas Company for judgment on the pleadings, were granted. (R. 84-85) The judgment of the Superior Court was affirmed by the District Court of Appeal, State of California, Second Appellate District, 155 A.C.A. 885, 318 P. 2d 795. Petitions for rehearing by the District Court of Appeal and for a hearing in the Supreme Court of the State of California were denied.

The allegations of the complaint are substantially set forth in the opinion of the District Court of Appeal, which has been attached as an appendix to Appellants' Statement as to Jurisdiction.

The series of events alleged to have occurred during the past twenty-one years may be summarized as follows:

About 1937 the County of Los Angeles, acting through its Board of Supervisors, determined to establish a prison farm and, in selecting the location, employed appraisers to appraise appellants' 1,400 acre

property near Newhall, California. Negotiations for appellants' property included discussions of both condemnation and the retention of mineral rights by the appellants. However, no condemnation action was instituted and no agreement for retention of mineral rights was reached. At the conclusion of negotiations, the appellants entered into a five year lease and option agreement with the County of Los Angeles, which expressly provided for purchase of the property by the County for the sum of $148,000 at any time during the five year term of the lease. (R. 5-8) Thereafter, the County elected to exercise its option and the appellants, on July 7, 1939, executed a grant deed which was without, and was then known by appellants to be without, reservation of mineral rights but which included fifteen other express reservations. (R. 70-75) The County accepted the deed by order adopted July 11, 1939, entered in Minute Book 252 of the Minutes of the Board of Supervisors, and paid appellants the purchase price (R. 69); and the deed was recorded July 20, 1939. (R. 76) The County established and operated the property thereafter and to date as Wayside Honor Rancho, a prison farm.

Some eleven years after the appellants sold the property to the County, namely, in April 1950, the County issued an oil lease authorizing The Texas Company as lessee to explore, drill for, and produce oil from the property. (R. 39) Within a few weeks thereafter, namely, on June 7, 1950, The Texas Company obtained an oil lease from the Dumns, appellants herein, covering the Dumns' mineral rights in a 150 foot strip of land which was specifically excepted from the 1939 deed to the County. (R. 37-47) The Dumns' lease to The Texas Company expressly noted the existence of the lease from the County and relied upon

that lease and continuing operations under it in establishing the royalties to be paid to the Dunns in the event oil was discovered. (R. 39)

After oil leases were issued by the County and the Dunns, respectively, to The Texas Company in April and June 1950, The Texas Company began drilling and was successful in finding and producing oil. Royalties have been paid regularly to the County and to the Dunns.

I.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Appellants' Statement as to Jurisdiction is based almost entirely upon allegations as to the County's authority to acquire land by eminent domain. ~~(R. 8-9)~~ However, the complaint shows on its face that the County acquired the property by purchase, not by condemnation. (R. 8) What might have been acquired by exercise of the right of eminent domain is entirely speculative.

> "This Court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them, or without reference to the manner in which the statute, whose constitutional validity is drawn in question, is to be applied. *Alabama State Federation of Labor* v. *McAdory*, No. 588, October Term, 1944, decided June 11, 1945, [325 U.S. 450, 459-463, 89 L.ed. 1725, 1733-1735] and cases cited." *Asbury Hospital* v. *Cass County* (1945) 326 U.S. 207, 213; 90 L.ed. 6, 13.

The 14th Amendment to the United States Constitution was never mentioned until after appellants' opening brief before the District Court of Appeals had been filed. Earlier oblique references to "just compensa-

tion" and "public use" were with respect to the theoretical powers of a governmental agency to take property in an eminent domain proceeding, an inquiry not applicable to the facts alleged by the complaint.

The California courts were called upon to decide the validity of the conveyance to appellee, Los Angeles County.

Appellants asserted in the California courts that appellee, County of Los Angeles, only took an easement under the deed.[1] The question of the interest conveyed by appellants to appellee, County of Los Angeles, is solely a matter of state law and does not raise a federal question. *Saydam* v. *Williamson* (1861) 65 U.S. 427, 16 L.ed. 742; *United States* v. *Fox* (1877) 94 U.S. 315, 320, 24 L.ed. 192; *United States* v. *Crosby* (1812) 11 U.S. 115, 116, 3 L.ed. 287.

Similarly, the right of the County of Los Angeles to acquire and hold real property by fee simple or otherwise is derived from and dependent upon the State of California.[2] and does not raise a federal ques-

[1] Under California law, as the lower court correctly decided, appellants' grant deed to the County of Los Angeles was a grant of fee simple title. Section 1105 of the Code of Civil Procedure, California; *Taylor* v. *Avila* (1917) 175 Cal. 203, 165 P. 533. A fee title to property, under California law, includes oil rights *City of Long Beach* v. *Marshall* (1938) 11 C. 2d 609, 82 P. 2d 362; *Brown* v. *Copp* (1951) 105 C.A. 2d 1, 232 P. 2d 868. While not relevant to the consideration of the instant motion, appellants' contention that a California governmental or public agency can take no greater title by purchase than it can by condemnation is similarly without merit under California law. *City of Oakland* v. *Schenck* (1925) 197 Cal. 456, 466; 241 P. 545, 549; *Highland Realty Co.* v. *San Rafael* (1956) 46 Cal. 2d 669, 297 P. 2d 15.

[2] Under California law a county or municipality is authorized to acquire fee simple title to realty. *Cooper* v. *Selna* (1920) 48 Cal. App. 228; *City of Santa Barbara* v. *Davis* (1904) 142 Cal. 669, 672, 76 P. 495.

tion. *Comrs. of Laramie Co.* v. *Comrs. of Albany Co.* (1876) 92 U.S. 307, 23 L.ed. 552.

Appellants further asserted before the California courts that they had been coerced into executing the lease and option to purchase by threats of the County's agent to institute "costly condemnation proceedings".[3] Questions of fraud or duress surrounding the conveyance of real property do not raise a federal question. *Cramer* v. *Wilson* (1904) 195 U.S. 408, 416, 49 L.ed. 256. Furthermore, threat of civil suit is not duress, even though there may be no legal right to enforce the claim. *Board of Trustees of National Training School* v. *O. D. Wilson Co., Inc.* (C.A. D.C. 1953) 133 F. 2d 399, 77 U.S. App. D.C. 127; *Automatic Radio Mfg. Co.* v. *Hazeltine Research* (1 Cir. 1949) 176 F. 2d 799, aff'd. (1950) 339 U.S. 827, 94 L.ed. 1312.

It thus follows that no substantial federal question is presented to this Court.

II.

THE LOWER COURT JUDGMENT RESTS ON ADEQUATE NON-FEDERAL BASES

The decision of the District Court of Appeal (1) affirmed the Superior Court's action sustaining the County's demurrer to the second, third and fourth causes of action on the grounds that they were barred by applicable statutes of limitation and (2) held that the request for declaratory judgment was similarly barred.

> "The complaint alleges that the Dumns executed the deed in July, 1939, and that oil was discov-

[3] The District Court of Appeal properly held that there had been no fraud or coercion. (Appendix, Jurisdictional Statement, pp. xviii, xxiv.)

ered by The Texas Company about August 22, 1950. The action was commenced August 19, 1955, which was more than 16 years after the Dunns executed the deed, and about five years after the discovery of oil. If the action be regarded as one to recover oil rights (an interest in real property) it is barred by Section 319 of the Code of Civil Procedure (five years); if it be regarded as one to recover for trespass upon or injury to real property it is barred by said section 338, subdivision 2, (three years); if it is based on fraud or mistake it is barred by said section 338, subdivision 4, (three years). '(T)he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations.' (*Maguire* v. *Hibernia S. & L. Soc.*, 23 Cal. 2d 719, 733 (146 P. 2d 673, 151 A.L.R. 1062).) '(T)he period of limitations applicable to ordinary actions . . . should be applied in like manner to actions for declaratory relief.' (*Maguire* v. *Hibernia S. & L. Soc.*, supra, 734.)" Appendix to Jurisdictional Statement, pp. xx-xxi.

* * * * * * *

"In *Wade* v. *Busby*, 66 Cal. App. 2d 709 (152 P. 2d 754), it was said (p. 702) that an action to set aside a deed upon the ground of undue influence was governed by the four-year period of limitation prescribed in Section 343 of the Code of Civil Procedure. In the present case the claim regarding coercion was barred by said section." Appendix to Jurisdictional Statement, p. xxiv.

A mere discussion by the District Court as to the validity of California's Industrial Farm Act, which

[1] California's statutes of limitations apply to both legal and equitable actions. *Hartley Pen Co.* v. *Lindy Pen Co.* (S.D. Cal. 1954) 16 F.R.D. 141, 158, citing among others, *Meigs* v. *Pinkham* (1910) 159 Cal. 104, 112 P. 838, 886.

appellants contend is violative of the 14th Amendment, is not sufficient to present a substantial federal question. *Black* v. *Cutter Laboratories* (1956) 351 U.S. 292, 298, 100 L.ed. 1188, 1196. Where there is adequate non-federal ground to support the judgment of the state court, there can be no review by this Court. *Herb* v. *Pitcairn* (1945) 324 U.S. 117, 125, 89 L.ed. 789, 794; *Wood* v. *Chesborough* (1913) 228 U.S. 672, 677, 57 L.ed. 1019, 1020.

> "And certainly the application of laches and the statute of limitations does not present a Federal question." *Wood* v. *Chesborough, supra,* at 677.

Appellants have not claimed, nor can they in good conscience claim that the above relied upon statutes of limitations were unreasonable time-wise.

Appellee, The Texas Company, in its motion for judgment on the pleadings raised a defense of estoppel based on the oil lease issued to The Texas Company by the appellants on June 7, 1950.[5] That lease recited the fact of The Texas Company's lease from Los Angeles County and, indeed, relied upon possible production under The Texas Company's lease from Los Angeles County to establish royalty payments due to the Dunns under their lease. The District Court of Appeals properly held that the appellants were estopped to claim as against The Texas Company that the deed to the County did not convey oil rights. (Appendix to Jurisdictional Statement, p. xxv.) Section 1962 of the Code of Civil Procedure, California establishes a conclusive pre-

[5] A copy of the lease was attached to The Texas Company's answer and was admitted as to due execution and genuineness pursuant to section 448 of the Code of Civil Procedure, California

sumption of estoppel. A decision by a state court based upon estoppel does not present a reviewable federal question. *Hale* v. *Lewis* (1901) 181 U.S. 473, 479-480, 45 L.ed. 959, 962.

CONCLUSION

It appears from the record not only that the federal question sought to be raised is hypothetical and non-existent, but also that the case was decided below on the separate, independent and non-federal bases of (1) the statute of limitations, (2) State-granted rights to and for the County to acquire a fee simple in realty by deed, and (3) estoppel. There is no reason for the Court to consider or pass upon the appeal. It should be dismissed.

Respectfully submitted,

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May 1958

Certificate of Service

I, John J. Wilson, one of the attorneys of record for The Texas Company, an appellee herein, and a member of the bar of the Supreme Court of the United States, do hereby certify that I have served the foregoing Motion to Dismiss and Supporting Brief, Filed by Appellee, The Texas Company on counsel of record by mailing a copy thereof, proper air mail postage prepaid, to each of the following:

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Dated at Washington, D. C., this 22nd day of May, 1958.

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